IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5505 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DILIPSINH R PARMAR

Appearance:

MR HARDIK C RAWAL for Petitioner

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 25/07/2000

ORAL JUDGEMENT

Heard learned counsel Mr. H.C. Rawal appearing on behalf of the petitioner GSRTC, and Mr. G.K. Rathod, learned counsel appearing on behalf of the respondent.

2. The respondent was working as Assistant Traffic Superintendent in the GSRTC, and he is the Vice President of the S.T. Karmachari Mandal, which is a recognised union. The respondent was transferred by an order dated 25-10-1994 from Santrampur Depot to Godhra Depot. It is submitted by learned counsel Mr. Rathod that the respondent being Vice President of the union, he should not have been transferred from Santrampur depot to Godhra depot as that will interfere with the union activity. It is also submitted by Mr. Rathod that, before transferring an office bearer of the union, consultation with the union is necessary, which has not been made in the present case. The matter was challenged before the Industrial Tribunal, Ahmedabad, and the Tribunal passed an interim order on 24-11-1994 staying the transfer order However, the respondent also did not join his duty in his place of transfer, that is in Godhra depot, and he remained absent. The Tribunal after hearing and taking evidence quashed the transfer order of the respondent by order dated 25-8-1999, and directed the petitioner Corporation to pay 30 % of the salary for the period from the date of transfer till he joins his duty in Santrampur. Having felt aggrieved by the order of the Industrial Tribunal, Ahmedabad, dated 25-8-1999 in Complaint (I.T.) Case No: 370 of 1994, the Corporation has filed the present petition for quashing order of the Tribunal.

3. Mr. Rawal, learned counsel for the petitioner very fairly submitted that the respondent is a protected workman and he is the office bearer of the S.T. Karmachari Mandal. It is also admitted by Mr. Rawal that, according to the settlement, before transfer of any office bearer, consultation with the union is required. It is an admitted fact that before transfer of respondent Mr.Dilipsinh R. Parmar, the Vice President of the Union, no consultation was made with the union at all. Therefore, I am of the view that the Tribunal has correctly quashed the transfer order. It is also an admitted fact that, the respondent did not join his duty in pursuant to his transfer order dated 25-10-1994 and instead he remained absent from duty from the date of his transfer. The Tribunal by an interim order dated 24-11-1994 directed the Corporation to allow the respondent to join in his original post at Santrampur depot but the order of the Tribunal was not complied with by the Corporation and the respondent remained absent from duty. Since the Corporation did not allow the respondent to join his duty, the Tribunal has allowed 30 % of the salary to the respondent. It is an admitted fact that the respondent did not perform his duty during

the period from the date of his transfer till today. There is also no record to show that the respondent made an attempt to attend his place of duty. Therefore, I am of the opinion that, awarding 30 % of the salary to the respondent without any proof that he really attended his office is not a reasonable amount. Since the respondent did not report for duty or did not attend his office from the date of his transfer till today, I am of the view that the back wages should be restricted to 15 % of the salary during the interregnum period which will meet the ends of justice.

4. The petitioner Corporation is accordingly directed to allow the petitioner to join his service at Santrampur immediately, and pay 15 % of the back wages for the interregnum period. The period from 25-10-1994 till the date of re-joining in service, his pay should be fixed notionally and on that basis 15 % back wages should be paid to the respondent. With the aforesaid modification in the judgment & award of the Industrial Tribunal, this petition is allowed in part. Rule made absolute to the aforesaid extent. I make no order as to costs.

Dt: 25-7-2000 (P.K. Sarkar, J)

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